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Human rights constitute a set of norms governing the treatment of individuals and groups by states and non-state actors on the basis of ethical principles regarding what society considers fundamental to a decent life. These norms are incorporated into national and international legal systems, which specify mechanisms and procedures to hold the duty-bearers accountable.

Theoretical background

There are numerous theoretical debates surrounding the origins, scope and significance of human rights in political science, moral philosophy, and jurisprudence. Roughly speaking, invoking the term "human rights" (which is often referred to as "human rights discourse" or "human rights talk") is based on moral reasoning (ethical discourse), socially sanctioned norms (legal/political discourse) or social mobilization (advocacy discourse). These three types of discourse are by no means alternative or sequential but are all used in different contexts, depending on who is invoking human rights discourse, to whom they are addressing their claims, and what they expect to gain by doing so. They are inter-related in the sense that public reasoning based on ethical arguments and social mobilization based on advocacy agendas influence legal norms, processes and institutions and thus all three contribute to human rights becoming part of social reality.

Human Rights as Ethical Concerns

Human rights share an ethical concern for just treatment, built on empathy or altruism in human behavior and concepts of justice in philosophy. The philosopher and economist Amartya Sen considered, in his "Elements of a Theory of Human Rights," that "Human rights can be seen as primarily ethical demands…Like other ethical claims that demand acceptance, there is an implicit presumption in making pronouncements on human rights that the underlying ethical claims will survive open and informed scrutiny." In moral reasoning, the expression "human rights" is often conflated with the more general concept of "rights", though "rights" refer to any entitlement regardless of its validity or legitimacy under a theory of justice. The moral basis of a right can draw on concepts such as natural law, social contract, justice as fairness, or consequentialism. All these traditions conceive of rights as entitlements of individuals, by virtue of their humanity or their membership in a political community (citizenship). In law, however, a right is any legally protected interest, whatever the social consequence of the enforcement of the right on the wellbeing of persons other than the right-holder (e.g., the property right of a landlord to evict a tenant). To avoid confusion, it is helpful to use the term "human right" or its equivalent ("fundamental right," "basic freedom," "constitutional right") to refer to a higher-order right, authoritatively defined, prevailing over other (ordinary) rights, and reflecting society's essential values.

Enlightenment philosophers derived the centrality of the individual from their theories of the state of nature. Social contractarians, especially Jean-Jacques Rousseau, predicated the authority of the state on its capacity to achieve the optimum enjoyment of natural rights, that is, of rights inherent in each individual irrespective of birth or status. He wrote in *Essay on the Origin of Inequality Among Men* that "it is plainly contrary to the law of nature…that the privileged few should gorge themselves with superfluities, while the starving multitude are in want of the bare necessities of life." Equally important was the concept of the universalized

individual ("the rights of Man"), reflected in the political thinking of Immanuel Kant, John Locke, Thomas Paine and the authors of the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and the Citizen (1789). The Enlightenment represented for the West both the affirmation of the scientific method, as a basis of human progress, and the formulation of human rights, as a basis for freedom and equality of citizens—criteria on which modern governments are judged. Meanwhile, Karl Marx and other socialist thinkers stressed community interests and egalitarian values, dismissing individual human rights as a "bourgeois" formulation.

The ethical basis of human rights has been defined using concepts such as human flourishing, dignity, duties to family and society, natural rights, individual freedom, and social justice against exploitation based on race, sex, class or caste. Though all part of the ethical discourse, the tensions in these ethical arguments—between political liberalism and democratic egalitarianism, between Locke and Rousseau, between liberty and equality, between civil and political rights and economic, social and cultural rights—have been part of the philosophical and political ambiguity of human rights for centuries.

Today, ethical and religious precepts continue to determine what one is willing to accept as properly a human right. Such precepts are familiar in debates over abortion, same-sex marriage, and the death penalty, just as they were in historic arguments over slavery and gender inequality. What has survived Sen's "open and informed scrutiny?" The answer often lies in our laws and treaties, although for him, "even though human rights can, and often do, inspire legislation, this is a further fact, rather than an constitutive characteristic of human rights." Legal positivists would disagree.

Human Rights as Legal Rights (Positive Law Tradition)

Alternatively, legal positivists regard human rights as resulting from a formal norm-creating process, an authoritative formulation of the rule by which a society (national or international) is governed. While natural rights derive from the natural order or divine origin, which are inalienable, immutable, and absolute, positive law rights are recognized through a political and legal process that results in a normative instrument, such as a law or treaty. These instruments may vary over time, and frequently contain derogations or limitations by which the right may be suspended or reduced in scope, in order to optimize practical respect for the right rather than setting an absolute standard. From this perspective, rights are part of the social order once proclaimed by an authoritative body, and their universality derives from the participation of virtually every nation in the norm-creating process, which often results in compromise language balancing various interests. The International Bill of Human Rights (consisting of the Universal Declaration of Human Rights [UDHR] of 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both legally-binding treaties opened for signature in 1966), along with the other human rights treaties of the United Nations (UN) and of regional organizations, constitute the primary sources and reference points for what properly belongs in the category of (legal) human rights.

Human Rights as Social Claims

Before they are written into legal texts, human rights often emerge from claims of people suffering injustice and thus are based on moral sentiment derived from cultural experience or belief systems. For example, the injustices of the Dreyfus Affair (1894) led to the creation of the *Ligue française des droits de l'homme* in 1898, later internationalized into the International

Federation of Leagues for the Rights of Man (now the International Federation for Human Rights). Amnesty International (founded in 1961), the Moscow Human Rights Committee (founded in 1970), and Helsinki Watch (founded in 1978 and expanded into Human Rights Watch in 1988) were among the more effective non-governmental organizations (NGOs), in the Global North, while many NGOs from the Global South have arisen, especially after the end of the Cold War.

These NGOs often emerged as social movements out of outrage, for example, at the mistreatment of prisoners, at the exclusion of persons with disabilities, or as part of struggles against colonialism. Such movements for social change often invoke human rights as the basis of their advocacy. If prevailing mores or law does not address their concerns, they agitate for a change in the theory or law. NGOs not only contributed to the drafting of the UDHR but also in bringing down Apartheid, transforming East-Central Europe and restoring democracy in Latin America and, more recently, to challenging dictatorships in the Middle East and North Africa and promoting non-discrimination against sexual minorities.

The appeal to human rights in advocacy discourse is no less legitimate than the legal and philosophical modes of discourse and is often the inspiration for the latter. Quoting Sen again, "The invoking of human rights tends to come mostly from those who are concerned with changing the world rather than interpreting it… The colossal appeal of the idea of human rights [has provided comfort to those suffering] intense oppression or great misery, without having to wait for the theoretical air to clear." Historical experience bears out that assessment.

Historical Background

The historical context of human rights can be seen from a wide range of perspectives. At the risk of oversimplification, four approaches to human rights history may be identified.

The first approach traces the deeper origins to *ancient religious and philosophical concepts* of compassion, charity, justice, individual worth, and respect for all life found in all major religions. Precursors of human rights declarations are found numerous texts from early civilizations, including the Code of Hammurabi (Babylon) and the Charter of Cyrus the Great (Persia). Others trace modern human rights to the *emergence of natural law theories* in Ancient Greece and Rome and Christian theology of the Middle Ages, culminating with the Enlightenment—and its contemporaneous rebellions—in Europe, combined with 19th century movements for the abolition of slavery, worker's rights, and women's suffrage. A third trend is to trace human rights to their enthronement in the *United Nations Charter of 1945 and the Universal Declaration of Human Rights of 194*8, drafted in reaction to the Holocaust and drawing on President Roosevelt's Four Freedoms. Post World War II national constitutions and international treaties built on that foundation. A fourth view is the very recent revisionist history argued by Professor Samuel Moyn considers human rights as peripheral in the aftermath of World War II and only significant as a utopian ideal and movement *beginning in the 1970s* as an alternative to the prevailing ideological climate.

Much scholarship, especially in Europe and North America, dates modern human rights theory and practice from the Enlightenment and the revolutions in spawned in France and America, giving rise to later anti-slavery and anti-colonial movements. Lynn Hunt, in "The Revolutionary Origins of Human Rights," affirms that

> Most debates about rights originated in the eighteenth century, and nowhere were discussions of them more explicit, more divisive, or more influential than in

> revolutionary France in the 1790s. The answers given then to most fundamental questions about rights remained relevant throughout the nineteenth and twentieth centuries. The framers of the UN declaration of 1948 closely followed the model established by the French Declaration of the Rights of Man and Citizen of 1789, while substituting "human" for the more ambiguous "Man" throughout.

Meanwhile, German philosopher Jürgen Habermas has written of the French Revolution: "revolutionary consciousness gave birth to a new mentality, which was shaped by a new time consciousness, a new concept of political practice, and a new notion of legitimization." While it took a century for this mentality to include women and slaves, social actors of the time, such as Mary Wollstonecraft in her *A Vindication of the Rights of Woman* (1792) and the Society for the Abolition of the Slave Trade (founded in 1783) anticipated future progress. The equal worth of all based on natural rights represented a sharp break from previous determinations of rights on the basis of hierarchy and status—and gave rise to subsequent social movements on behalf of the marginalized and the excluded throughout the modern era. Still, the reality of inequality and discrimination has persisted, posing an enduring challenge to the theory of equal human rights for all.

The Second World War was the defining event for the internationalization of human rights. Human rights were a major part of Allied wartime goals, and became enshrined postwar by the UN Charter (1945), bedrock human rights texts, including the Genocide Convention and the Universal Declaration of Human Rights in 1948, the Geneva Conventions in 1949, followed in 1966 by the International Covenants on Human Rights and UN and regional conventions on racial discrimination, torture, women, children, migrant workers, persons with disabilities and other major social issues. Procedures were also established for intergovernmental investigation and criminal accountability building on the experience of the Nuremberg Trials (1945-6), leading, after the hiatus of the Cold War, to the ad hoc tribunals regarding former Yugoslavia and Rwanda and eventually to the International Criminal Court, which came into being in 2002.

Human Rights in the Global Context

To understand how human rights are part of the global agenda, we need to ask (A) why states even accept the idea of human rights obligations when they are supposed to be sovereign. Then we will explore (B) what is the current list of human rights generally accepted, before asking (C) whether they correspond to the basic values of all societies or are imposed from the outside for ideological reasons. Finally, we will examine (D) how they are transformed from word to deed, from aspiration to practice.

Why Do Sovereign States Accept Human Rights Obligations?

The principle of State sovereignty means that neither other States nor international organizations can intervene in a State's internal affairs. In international law and relations, this principle of non-intervention is balanced by the pledge States make in joining the UN "to take joint and separate action in co-operation with the Organization for the achievement of … universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

So state sovereignty is balanced with legitimate concern of the international community about human rights in all countries. How that balance is interpreted varies according to theories of international relations. For *realists* (a theory that focuses on governments as sovereign actors

in international affairs, pursuing their national interests through the projection of power, without constraints of any superior authority), only weak countries are under any constraint to allow international scrutiny of their human rights performance. For the *liberal internationalist*, global institutions and values, like human rights, matter more, although the international system is still based on state sovereignty. Theories of *functionalism* attach importance to gradual political federation via regional organizations that slowly shift authority to international institutions. Human rights take on even greater importance for *constructivism,* the most cosmopolitan of international relations theories, which holds that ideas define international structure, which in turn defines the interests and identities of states. Thus, social norms, such as human rights, can shape foreign policy. In sum, as Richard Falk and others argue, absolute sovereignty has given way to the conception of "responsible sovereignty," according to which sovereignty is conditional upon the State's adherence to minimum human rights standards and capacity to protect its citizens.

In practice, states have accepted human rights obligations in many forums, with many possible motivations, with the result that human rights have gradually become part of the definition of acceptable state behavior. In order to understand this phenomenon, it is useful to examine the current set of human rights standards.

How Do We Know Which Rights Are Recognized as Human Rights?

While it is legitimate to draw on philosophical arguments or activist agendas to claim any global social issue as a human right, it is also useful to identify which rights are legally recognized, the core source for which is the International Bill of Human Rights. This document enumerates approximately 50 normative propositions that have served as the basis for further human rights instruments, including five group rights, twenty-four civil and political rights (CPR), and fourteen economic, social and cultural rights (ESCR). It also sets out seven principles that explain how the rights should be applied and interpreted. The following table enumerates the first 47 of these rights.

Table 1: International Bill of Human Rights, List of Rights, United Nations, 1948 and 1966

Group Rights

1. Self-determination
2. Permanent sovereignty over natural resources
3. Right to enjoy one's culture
4. Right to practice one's religion
5. Right to speak one's language

Civil and Political Rights (CPR)

1. Right to life
2. Freedom from torture
3. Freedom from slavery
4. Freedom from arbitrary arrest/detention
5. Right to humane treatment in detention
6. Freedom of movement and resident
7. Prohibition of expulsion of aliens
8. Freedom of thought, conscience, and religious belief
9. Freedom of expression
10. Right to privacy
11. Non-imprisonment for debt
12. Fair trial (sub-divided into 16 enumerated rights)
13. Right to personhood under then law
14. Equality before the law
15. Freedom of assembly
16. Freedom of association
17. Right to marry and found a family
18. Rights of children

19. Right to practice a religion
20. Prohibition of war propaganda and hate speech constituting incitement

21. Right to hold office
22. Right to vote in free elections
23. Right to be elected to office
24. Equal access to public service

Economic, Social, and Cultural Rights (ESCR)

1. Right to gain a living by work freely chosen and accepted
2. Right to just and favorable work conditions
3. Right to form and join trade unions
4. Right to strike
5. Social security
6. Assistance to the family, mothers, and children
7. Adequate standard of living (including food, clothing, and housing)
8. Right to the highest attainable standard of health (mental and physical)
9. Right to education towards the full development of human personality
10. Free and compulsory primary education
11. Availability of other levels of education
12. Participation in cultural life
13. Protection of moral and material rights of creators and transmitters of culture
14. Right to enjoy the benefits of scientific progress

Source: Author.

Finally, the seven *principles of application and interpretation* include the principles of progressive realization of ESCR (States must take meaningful measures towards full realization of these rights), of immediate implementation of CPR (States have duties to respect and ensure respect of these rights), of non-discrimination applied to all rights, of an effective remedy for violation of CPR, and equality of rights between men and women. The International Bill also specifies that human rights may be subject to limitations and derogations and that the rights in the Covenants may not be used as a pretext for lowering an existing standard if there is a higher one under national law.

These rights are traditionally grouped in two major *categories of human rights* (CPR and ESCR, with a third category of solidarity rights--development, peace, clean environment, humanitarian assistance, etc.—sometimes added), but the reasons for separating them into these categories have been questioned. For example, it is often claimed that CPR are absolute and immutable, whereas ESCR are relative and responsive to changing conditions. However, in practice, the establishment and expansion of all rights have been driven by changing power relations, as in the case of torture and slavery—both of which were considered acceptable for centuries.

It is also argued that CPR are to be implemented immediately, may be enforced through judicial remedies, and are relatively cost-free since they merely require the state to leave people alone (so-called “negative rights”), whereas ESCR should be implemented progressively, in accordance with available resources, since they require state expenditure (so-called “positive rights”) and are not suitable for lawsuits. While often true, many ESCR have been made

"justiciable" (subject to lawsuit by people unsatisfied by the State's implementation), and many CPR require considerable resources (for example, the funding required for police and judicial systems). Others argue that only CPR are appropriate for denouncing violations by states, while ESCR should be subject only to a cooperative approach. Again, reality has shown this is not always the case. So these two categories—which the UN regards as inter-related and equally important—are not watertight and reasons for considering them different by nature may be challenged. In practice, the context dictates the most effective use of resources, institutions, and approaches more than such categorizations.

Are Human Rights the Same for Everyone?

The term "universal human rights" implies that they are the same for everyone. The UDHR refers to "the inherent dignity and … equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world." The fact that all countries have endorsed the UDHR implies their universality, at least formally. Conversely, cultural relativists claim that human rights are based on values that vary from one society to another, rather than being universal. For example, the so-called "Asian values" argument states that human rights are a Western idea at odds with Asian governance models. A related view holds that the concept of human rights is a tool of imperialism used to disguise Western ambitions against the developing world. A third is the "clash of civilizations" argument that only the liberal West is capable of realizing human rights since the other civilizations lack sufficient sense of the individual and the rule of law. Compatibility of human rights with diverse belief systems was also an issue in the "Arab Spring" of 2011, in which both Islamic and human rights values motivated peoples across the Middle East and North Africa to overthrow deeply entrenched dictatorships.

The World Conference on Human Rights (Vienna, June 1993, paragraph 5) addressed the general question of balancing universal and cultural claims with this compromise language:

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

This statement captures an important feature of human rights today, namely, that they are universal but must be realized in the context of the prevailing values of each society. To understand this issue fully requires an understanding how universally accepted human rights are put into practice.

How Are Human Rights Put into Practice?

Human rights are traditionally studied in a global context through the *norm-creating processes,* which result in global human rights standards, and the *norm-enforcement processes,* which seek to translate laudable goals into tangible practices. There are continuing and new *challenges* to the effectiveness of this normative regime.

The *norm-creating process* refers to authoritative decision-making that results in specific human rights and obligations in a given society and clarifies what is expected to realize the right

in practice. The typical norm-creating process in international human rights follows these steps:

1. Expression of concern by a delegate to a political body
2. Lobbying for co-sponsors leading to adoption of a resolution
3. Commissioning of a study on the issue
4. Drafting of a declaration, followed by experience promoting its standards
5. Drafting of a convention, followed by ratification by states, giving it force of law
6. Adoption of an optional protocol for complaints procedures

All the major human rights issues have gone through these phases, which can last decades. Through this process, the International Bill of Human Rights has given rise to several hundred global and regional treaties. A similar process occurs in specialized organizations dealing with such issues as victims of armed conflicts, refugees, workers, and environmental protection.

Defining human rights is not enough; measures must be taken to ensure that they are respected, promoted and fulfilled. In the domestic legal system, this *norm-enforcement process* is based on the binding nature of law and the capacity of courts and the police to use force to compel compliance. In the international human rights regime, law is not treated in quite the same way. The term "enforcement," for example, refers to coerced compliance, which is rare, while most efforts focus on "implementation," that is, a wide range of supervision, monitoring and general efforts to hold duty-holders accountable. Implementation is further subdivided into *promotion*—preventive measures to ensure respect for human rights in the future—and *protection*—responses to violations that have occurred in the past. The eight means and methods of implementation may be summarized in three forms of promotion and five forms of protection, given in the table below.

Table 2: Means of Implementation and Enforcement of Human Rights

MEANS OF IMPLEMENTATION	**EXAMPLES**
PROMOTION	
1. Developing awareness	Circulation of publications; media coverage; human rights education and learning; action by civil society organizations.
2. Standard-setting and interpretation	Adoption of declarations and conventions by UN Human Rights Council, regional bodies; general comments by treaty bodies; interpretation by tribunals.
3. Institution building	Judiciary and law enforcement; national

	commissions and ombudsman offices.
PROTECTION	
4. Monitoring compliance with international standards	Reporting procedures, complaints procedures, fact-finding and investigation, special procedures, Universal Periodic Review (UPR).
5. Adjudication	Quasi-judicial procedures by treaty bodies; judgments by international and regional tribunals.
6. Political supervision	Resolutions judging state policy and practice by international bodies; "naming and shaming" by Human Rights Council, UN General Assembly; demarches, public and private statements by states and senior officials.
7. Humanitarian action	Assistance to refugees and internationally displaced persons in humanitarian emergencies; repatriation and resettlement.
8. Coercive action	UN Security Council sanctions; creation of criminal tribunals; and use of force under the doctrine of "responsibility to protect" people from genocide, war crimes, ethnic cleansing and crimes against humanity.

Source: Author

The adoption of norms and the implementation of accountability procedures are not enough to eliminate the deeper causes of human rights deprivation. Reliance on state action in global politics and on profit maximization in global economics--not to mention cultural traditions based on patriarchy, class, and ethnicity--pose major barriers to human rights realization. Because of their relationship to these structural forces, human rights are inherently political. At the same time, human rights offer a normative framework for achieving sustainable change in the midst of these macro forces. Appeals to human rights are generally supported, at least rhetorically, by the community of nations, as well as by networks of global solidarity. These networks have profoundly affected history, and they will continue to play a role in the battles of the current century, from environmental degradation and poverty to terrorism and sexual discrimination, which will continue to test the value of human rights as a normative and institutional guide to policy and practice.

Looking Forward

This chapter began by asking whether human rights have to be considered only in legal terms and saw that there are at least three modes of discourse concerning human rights as a global social issue: legal, philosophical and advocacy. All three overlap in the sense that ethical traditions and social movements influene the political and legal processes, which in turn generate legal instruments of human rights. It then explored the list of human rights, which has emerged

from that process especially in the post-1945 era and the weakness of the traditional separation into two categories. Finally, it examined the processes by which human rights norms are recognized and put into practice by promotion and protection, and the challenges to their implementation.

In the coming decades, we can expect to see further expansion of institutional human rights machinery in Asia and the Middle East, and progress in treating ESCR as equal in importance to CPR. We can also expect further clarification of emerging issues, such as the rights of sexual minorities, and further refinement of the means of human rights promotion and protection. However, the essential value of human rights thinking and action will remain as a gauge for governmental legitimacy, a guide for prioritizing human progress, and a basis of global social consensus on the values that we share across diverse ideologies and cultures.

Stephen P. Marks

Further Research

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Human Rights First: http://www.humanrightsfirst.org/

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